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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

KUNDE ENTERPRISES, INC.,

Plaintiff,

v.

NATIONAL SURETY CORPORATION,

Defendant.

CASE NO. 4:19-cv-06636-JSW

**STIPULATED FACTS FOR PARTIES'
CROSS-MOTIONS FOR SUMMARY
JUDGMENT**

Judge: Hon. Jeffrey S. White

1 Pursuant to the Court’s Order Regarding Joint Request to Set Briefing Schedule for
2 Cross-Motions for Summary Judgment (Dkt. 56), Plaintiff KUNDE ENTERPRISES, INC.
3 (“Kunde”) and Defendant NATIONAL SURETY CORPORATION (“National Surety”)
4 (collectively, the “Parties”), by and through their undersigned counsel, hereby jointly stipulate to
5 the following facts for reference in the Parties’ cross-motions for summary judgment (or partial
6 summary judgment):

7 1. Kunde is a family operated winery and vineyard in Kenwood (Sonoma County),
8 California, that grows grapes and produces multiple tiers of wine crafted from the grapes grown
9 on its Sonoma Valley ranch. Kunde also purchases grapes from third-party growers for a
10 separate line of products that are not marketed as estate-bottled wine.

11 2. Kunde purchased a property insurance policy from National Surety under policy
12 number S95-MZX-80977326 for the period April 1, 2017 through April 1, 2018 (the “Policy”).

13 3. The Policy’s Property-Gard Business and Real and Personal Property coverage
14 form has limits of \$35,060,173. The Policy includes a Property-Gard Select - Perishable Stock
15 Coverage form with a \$1 million sublimit.

16 4. The Property-Gard Business and Real and Personal Property coverage form
17 “insures all risks of direct physical loss or damage” to covered property, “except as excluded or
18 limited elsewhere in this Coverage Section.”

19 5. In October 2017, a series of wildfires raged across Northern California, including
20 in Napa and Sonoma Counties. The Nuns Fire, centered in the areas to the east and north of the
21 city of Sonoma, merged with several other fires, growing to over 54,000 acres in size (the
22 “Wildfires”). Air quality in the areas affected by the Wildfires reached “hazardous” levels
23 during the Wildfires, the most dangerous on the EPA scale, which included significant levels of
24 smoke and other particulates.

25 6. Smoke from the Wildfires infiltrated Kunde’s vineyards and winemaking
26 facilities and the finished wine conveyed strong aromas and undesirable tastes, destroying the
27 marketability of the wine beyond mere salvage value.

28

1 7. The smoke taint occurred to two groups. The “Watch List” wines consisted of 15
2 lots made from grapes that were harvested before the Wildfires began. The “Fire Lot” wines
3 consisted of 32 lots made from grapes harvested October 20-30, 2017.

4 8. Beginning on October 16, 2017, Kunde exchanged emails with its broker, Hub
5 International. Kunde provided initial notice of loss and claim to National Surety on October 16,
6 2017.

7 9. Kunde’s initial notice of loss and claim to National Surety on October 16, 2017,
8 was a timely tender for coverage under the Policy. Kunde, its broker, and National Surety
9 participated in a conference call on October 17, 2017. Kunde thereafter provided further
10 information regarding its claimed losses, including on July 2, 2018, August 22, 2018, August 31,
11 2018, March 11, 2019, and February 12, 2020.

12 10. On October 9, 2018, National Surety provided a letter to Kunde regarding
13 coverage.

14 11. On October 22, 2018, Greg Skorheim, on behalf of Kunde, objected via email to
15 National Surety’s coverage position.

16 12. Following National Surety’s requests for additional information and Kunde’s
17 response to the same, on March 14, 2019, National Surety provided a further coverage letter to
18 Kunde, stating National Surety’s position that the Policy provides coverage for the Watch List
19 under the Policy’s Perishable Stock Coverage form which had a sublimit of \$1 million. The
20 letter also stated National Surety’s position that the Policy did not provide coverage for the Fire
21 Lot.

22 13. On August 22, 2018, Latham & Watkins (“Latham”), on behalf of Kunde,
23 objected by letter to National Surety’s coverage position and requested further reconsideration
24 and indemnification of Kunde’s loss.

25 14. On September 12, 2019, National Surety responded to Latham’s letter
26 maintaining its coverage position.

27 15. On January 21, 2021, National Surety took the Examination of Oath of Pat
28 Roney and Zach Long in connection with this matter.

16. On March 5, 2021, National Surety sent Latham a revised coverage position letter with a report from its forensic accountants, Baker Tilly.

17. On March 19, 2021, Latham responded by letter to National Surety objecting to its position and the report from Baker Tilly.

18. National Surety has paid Kunde \$1 million for damage to the Watch List, which the parties agreed “will not operate as an accord and satisfaction of, or settlement of, or waiver of Kunde’s claims and positions (or any portion thereof).” National Surety has not paid any other amount toward Kunde’s losses due to smoke taint.

IT IS SO STIPULATED.

Date: February 18, 2022

MOUND COTTON WOLLAN & GREENGRASS LLP

By: /s/ Melissa A. Dubbs
 Melissa A. Dubbs
 Jonathan Gross
 Attorneys for Defendant
 National Surety Corporation

Dated: February 18, 2022

LATHAM & WATKINS LLP

By: /s/ James A. Tabb
 James A. Tabb
 Attorney for Plaintiff
 Kunde Enterprises, Inc.

SIGNATURE ATTESTATION

Pursuant to the Northern District of California's Local Rule 5-1(i)(3), I attest that concurrence in the filing of the document has been obtained from each of the other Signatories.

Dated: February 18, 2022

/s/ James A. Tabb

James A. Tabb